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FOURTH ANNUAL REPORT

of the

**SOUTH CAROLINA
SECOND INJURY FUND**

to the

GENERAL ASSEMBLY

July 1, 1977 through June 30, 1978

Printed Under the Direction of the
State Budget and Control Board

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SOUTH CAROLINA

SECOND INJURY FUND

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LETTER OF TRANSMITTAL

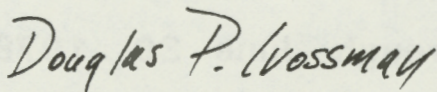
Columbia, S. C. July 1, 1978

TO: His Excellency, the Governor of South Carolina, The Honorable Members of the Senate and House of Representatives, Columbia, South Carolina.

Gentlemen:

I am pleased to report herein the activities of the South Carolina Second Injury Fund for the fiscal year 1977-1978.

Respectfully submitted,

A handwritten signature in cursive script that reads "Douglas P. Crossman". The signature is written in dark ink and is positioned above the printed name of the signatory.

Douglas P. Crossman, Director

HISTORICAL DEVELOPMENTS

Second Injury Funds, also commonly referred to as Subsequent Injury Funds or Second Injury Funds, are a part of the Workers' Compensation system. They are designed to provide additional benefits to workers who are injured by a second injury while they are still receiving benefits for a first injury. The purpose of these funds is to ensure that workers who are injured by a second injury while they are still receiving benefits for a first injury are not left without financial support.

SOUTH CAROLINA SECOND INJURY FUND

Douglas P. Crossman

Director

Hearings and Other Legal Proceedings

Total Dollars Paid by the Second Injury Fund

Insurance Companies and Self-Insurers

Field Representatives

Claims Reported by Insurance Companies and Self-Insurers

Claims Reported by Insurance Companies and Self-Insurers

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Claims Reported by Insurance Companies and Self-Insurers

TABLE OF CONTENTS

	Page
Letter of Transmittal	ii
Organizational Chart	iii
Historical Development	5
Administration	5
Statutory Authority for the Agency	6
Financial Statement	9
Assessments	10
Claims Activity Against Fund.....	11
Lapsed Death Benefits Paid Into Fund.....	11
Hearings and Other Legal Proceedings	11
Total Dollars Paid By The Second Injury Fund To Insurance Companies or Self-Insureds	12
Individual Employers Benefiting From Reimbursements Paid To Insurance Companies or Self-Insured Employers By The Second Injury Fund	13
Claims Reported by Insurance Carriers and Self-Insureds	15

HISTORICAL DEVELOPMENTS:

Second Injury Funds, also commonly referred to as Subsequent Injury Funds or Special Disability Funds, are set up within the administrative framework of the Workmen's Compensation system to insure that an employer who hires a handicapped worker will not, in the event such worker suffers a subsequent injury on the job, be held liable for a greater disability than actually occurred while the worker was in his employment. Under such a system the employer pays only the benefits that are due for the second injury. This creates additional employment opportunities for disabled workers by removing an employer's fear of increased Workmen's Compensation costs. The system of apportionment varies from state to state, and a discussion of how the employer in South Carolina is reimbursed or how his liability is limited when the handicapped worker sustains a subsequent injury is found in a later section.

The Workmen's Compensation Law in South Carolina has contained provisions for Second Injury Fund benefits to insure employees since the law was enacted in 1936. Inadequate funding and the narrow scope of the law prevented effective utilization of the Fund by employers and employees. In 1972 the act was amended creating a broad-coverage Second Injury Fund and again amended in 1974 establishing the Fund as a separate state agency.

ADMINISTRATION

The Administration of the Second Injury Fund has changed both in structure and number of staff. The organization now consists of the Director, a Claims Manager, a Business Manager, two Claims Field Representatives, a Staff Assistant and a Clerk-Typist. All staff members are initially responsible to the Director, and their major areas of activity are claims, finance and employer-insurance carrier education.

The claims handling consists of receiving and processing claims against the Fund. This includes investigation, evaluation and developing a course of action as well as reaching a disposition in each case. All fatal cases reported to the South Carolina Industrial Commission are reviewed by the staff; and in the absence of dependents or next-of-kin in fatal Workmen's Compensation cases, the Second Injury Fund is beneficiary of the commuted death benefits normally paid to the dependents or next-of-kin.

The financial operation consists primarily of assessing all

carriers—insurance companies, self-insured employers and self-insured funds. This is accomplished by using the formula found in Section 42-7-310 code of laws of South Carolina. From a very fundamental standpoint this operation is responsible for maintaining the solvency of the Fund.

The educational functions are accomplished by:

1. The Director of the Fund at various Industrial Commission, employer and insurance carrier conferences by presenting films about the Fund and then conducting question and answer sessions.
2. The Claims Field Representatives, while in the field attending hearings and conducting investigations, explaining to both employers and carriers the extent of coverage by the Fund.

This method of education appears to have been successful since our disbursements for FY 1978 exceeded those for FY 1977 and the projected disbursements for FY 1979 may double those of FY 1978.

STATUTORY AUTHORITY FOR THE AGENCY:

Section 42-9-310 of the South Carolina Workmen's Compensation Law creates the Fund and establishes the agency to administer the Fund in accordance with the provisions of Section 42-9-400 and 42-9-410.

The following outline lists the basic requirements for reimbursement:

1. The employee must have a prior permanent physical impairment of such seriousness as to constitute a hindrance or obstacle to obtaining employment or reemployment.
2. (a) The employer must establish by written records that he had knowledge of the permanent physical impairment at the time the employee was hired or retained, and these records must be filed with the Industrial Commission and the Second Injury Fund when claim is made for reimbursement; or
 - (b) The employer may qualify for reimbursement if he can show proof that he did not have prior knowledge of the employee's pre-existing physical impairment, because the existence of such condition was concealed by the employee or was unknown to the employee.
3. The employee must sustain a subsequent occupational injury:
 - (a) Which results in the employer's liability for disability that is

substantially greater than that which would have resulted from the new injury alone because of a combination with or aggravation of the prior impairment.

- (b) Which most probably would not have occurred "but for" the presence of the prior impairment; or
- (c) Which results in the death of the employee, and the death would not have occurred except for the pre-existing impairment.

The Second Injury Fund principle requires that costs of the benefits payable be allocated between the employer or insurer on one hand, and the Second Injury Fund, on the other. It is most common for the employer or his insurer to pay the disability caused by the second injury and the Second Injury Fund to make up the difference between the employer's liability and whatever is payable as a whole. In revising the Second Injury Fund in South Carolina, the Legislature attempted to establish a system of reimbursement that would eliminate a controversy over proportionate sharing in particular cases and expedite the other determinations that need to be made in order that the employee or his beneficiaries receive payments. For this reason, the 78 week rule was established requiring the employer to pay the first 78 weeks of disability. Thereafter, this same employer is eligible to receive reimbursement from the Second Injury Fund for all remaining benefits.

Before the Fund can reimburse an employer, a handicapped worker must suffer a subsequent injury. This injury must combine with or aggravate the prior impairment, thus causing liability greater than that which would have occurred from the subsequent injury alone. This is the basic concept of Second Injury Fund Legislation; and without this increase in liability, the employer has not been placed at a disadvantage. Therefore, he would not be eligible for reimbursement.

Prior to Section 42-7-310, Rule 38 was adopted by the South Carolina Industrial Commission to implement assessments for fiscal year 1976-77 and subsequent years.

RULE NUMBER 38 READS AS FOLLOWS:

The South Carolina Second Injury Fund shall make inquiries annually of all carriers (which, by definition herein, shall include all insurance carriers, self-insurers, and the State Workmen's Compensation Fund), who transacted any business in this State

during the preceding calendar year, regarding the total indemnity and medical workmen's compensation benefits paid in this State during the preceding calendar year. Such inquiries will be made not later than the 15th day of February of each calendar year and must be answered and returned by each carrier within thirty (30) days from the date on the inquiry. The carrier's response must be in the form of an affidavit, sworn and subscribed to before a notary public by an officer or agent of the carrier. Any person who shall willfully make a false or fraudulent statement in response to the inquiry may be punished as provided by law.

Assessments for the fiscal year ending June 30th shall be sent to all carriers by no later than July 15th. Within thirty (30) days after the date of the assessment statement, all carriers will make payment to the Fund. Any questions or inquiries by carriers regarding the assessments shall be made to the Director of the Fund but shall not extend the time for payment. All disputes regarding the accuracy or validity of the assessment will be resolved by the Industrial Commission. If the Commission shall decide that a carrier has been improperly assessed, then the Fund shall promptly refund the amount of overpayment.

In the event that a carrier shall be delinquent in paying its assessment, the Fund shall petition the Industrial Commission to order payment, such Order to be served upon the carrier by registered mail. If the carrier does not comply with the Commission's Order within ten (10) days after service, then the Fund may seek further legal relief as provided by the laws of this State.

FINANCIAL STATEMENT

FISCAL 1977 - 78

Balance from previous year \$ 7,351.00

Receipts

Investments	\$ 30,633.00
No Next-of-Kin Benefits	62,446.00
Assessments	<u>991,525.00</u>
Total	\$1,084,604.00

Disbursements

Claims paid by the Fund	\$949,088.00
Administrative Costs	<u>122,968.00</u>
Total	\$1,072,056.00

Balance in the Fund @ 30 Jun 78 \$ 19,899.00

ASSESSMENTS

Section 42-7-310 subsection (d) of the Workmen's Compensation Laws of South Carolina states that:

The funding of the Second Injury Fund on a continuing basis shall be by equitable assessments upon each carrier (which, by definition herein, shall include all insurance carriers, self-insurers and the State Workmen's Compensation Fund) in a manner as follows:

Each carrier shall, under regulations prescribed by the Industrial Commission, make payments to the Fund in an amount equal to that proportion of one hundred seventy-five percent of the total disbursement made from the fund during the preceding fiscal year less the amount of the net assets in the fund as of June thirtieth of the same fiscal year, which the *total benefits* paid by such carrier bore to the *total benefits* paid by all carriers during the calendar year which ended within the preceding fiscal year. An employer who has ceased to be a self-insurer shall continue to be liable for any assessments into the Fund on account of any benefits paid by him during such calendar year.

These assessments were sent to each carrier on 1 Jul 78 and were received at the Second Injury Fund by Aug 78.

175% of the disbursements of \$1,072,056 is	\$1,876,098
Less remaining net assets @ 30 Jun 78	19,899
Equals Second Injury Fund Assessment for 1977-78 ...	\$1,856,199

This assessment (\$1,856,199) divided by the total Workmen's Compensation Benefits paid by all carriers (\$45,692,709) equals the assessment rate (.04062346) applied to each carrier.

CLAIMS ACTIVITY AGAINST FUND

Claims carried from 1976-77	398
Claims against Fund	413
Claims closed	196
Claims open at end of fiscal year 1976-77	615
Increase in claims against Fund 1977-78 as compared to 1976-77	27%
Increase in claims open at end of 1978 compared to 1977	65%
Total Claims paid	82
Average disbursement per case paid	\$11,574.25
Reimbursements Fiscal Year 1977-78	\$949,088.94
Reimbursements Fiscal Year 1976-77	\$444,960.88
Percent increase	113%

LAPSED DEATH BENEFITS PAID INTO FUND

Fatal Cases Reviewed	134
1. Above cases fully investigated or litigated	10
2. Recovery	\$62,446.46

HEARINGS AND OTHER LEGAL PROCEEDINGS

Proceedings Attended	380
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The rate of increase in claims against the Fund has decreased as a result of better quality claims made by carriers and employers. Also, the time period for filing claims has been extended. Many claims previously reported never went over 78 weeks of liability. Employers and carriers must now file claims before the payment of 78 weeks of compensation rather than before 78 weeks following the injury.

**TOTAL DOLLARS PAID BY THE SECOND INJURY FUND TO
INSURANCE COMPANIES OR SELF-INSURED FOR
FISCAL YEAR 1977-78**

Aetna Casualty & Surety Co.	\$ 75,690.86
American Motorist	74,547.81
American Mutual	19,800.60
Associated Indemnity	11,789.78
Crum & Forster Insurance Companies	2,727.32
CNA Insurance Company	39,921.60
Duke Power Company*	6,634.80
Employers Insurance of Wausau	3,710.30
General Accident Group	23,991.74
Greenwood Mills*	1,266.94
Hartford Insurance Co.	35,139.30
Home Insurance Co.	82,685.62
INA Insurance Company	22,361.44
Liberty Mutual Ins. Co.	193,585.64
Lumberman's Mutual Ins. Co.	14,788.44
Maryland Casualty Ins. Co.	32,100.83
Randolph Hope Co.	64,323.05
Royal Globe	27,106.82
Sears*	10,000.00
Singer*	324.72
S.C. Electric & Gas*	18,733.20
S. C. Insurance Company	6,975.91
Southern Farm Bureau	28,158.06
Springs Mills*	38,603.29
State Fund	10,280.43
Transport Ins. Co.	17,022.64
Travelers Insurance Co.	14,670.70
U. S. Fidelity & Guaranty	60,335.60
Utica Mutual Ins. Co.	3,938.32
Westvaco*	7,873.18

* Self-Insured Employer

**INDIVIDUAL EMPLOYERS BENEFITING FROM
REIMBURSEMENTS PAID TO INSURANCE COMPANIES OR
SELF-INSURED EMPLOYERS BY THE SECOND INJURY
FUND**

American Hoechst Fibers	\$29,144.54
American Monorail	23,991.74
Associated Mechanical Erectors	303.70
Ballenger Corp.	4,388.32
Barnwell Mills	12,598.78
Beaufort & Jasper Health Department	15,968.57
Belk Simpson Company	15,932.42
Bi-Lo	4,296.86
Black River Electric Corporation	25,187.10
Bowsteel Corp.	30,858.26
Bowaters	138.80
Catawba Trucking	2,948.48
Coble Dairy	11,701.85
Collins Cadillac	5,783.34
Community Cash Store	21,589.82
Continental Southeastern Lines	4,487.80
County of Greenville	16,029.56
Daniel Construction Company	34,693.14
Del Monte	11,789.78
Dillon Tire Service	6,975.91
Drexel Heritage	25,681.22
Duke Power	6,634.80
E. M. Jones Chevrolet	24,011.15
European Health Spa	6,428.32
Firestone	14,670.70
Forest Hills Nursing	5,906.53
Furman University	27,106.82
Gombert V. W.	2,147.30
Graniteville Company	2,054.69
Gray Mortuary	31,797.13
Great Falls Building & Supply	23,258.90
Greenwood Mills	1,266.94
Homelite	4,562.70
Industrial Mechanical Service	21,891.77
James Triplett, Inc.	5,197.50
J. B. Ivey	5,557.78
J. P. Stevens	13,683.59
Kendall Co.	12,681.66

Kline Iron & Steel	3,710.30
Leder Bros.	455.36
M. Lowenstein	43,542.87
Mid State District	4,213.71
N. C. Allstate Services	24,744.97
N. Trident Regional Hospital	6,388.74
Orangeburg County Community	3,512.93
Palmetto Loom Reed Company	8,251.55
Pet, Inc.	345.70
Piedmont Aviation	27,444.99
R. C. Motor Lines	5,665.82
Riley Stoker Corp.	19,236.09
Rock Hill Printing	14,302.50
Rogers Plumbing & Heating	2,727.32
Roller Bearing of S.C.	1,326.61
Sears	10,000.00
Singer Co.	324.72
SLED	2,000.00
Smith Transfer Corp.	11,356.82
S. C. Auto Assn.	15,020.00
S. C. Electric & Gas	18,733.20
South Farm Bureau	4,899.16
Spartan Mills	5,227.97
Springs Mills	38,603.29
Texize Chemicals	3,938.32
Textron	16,775.21
Timmonsville	4,767.50
Twin City Motor Co.	17,361.26
Tyson & Co.	34,170.67
Union Carbide	3,462.04
United Parcel	20,174.05
W & W Mobile Homes	6,354.20
Wateree Textile	22,361.44
Westvaco	7,873.18
Woodstock Mfg.	11,679.74
Zenith Engraving	14,788.44

CLAIMS REPORTED BY:

A. Insurance Carriers	
Aetna Life and Casualty.....	27
Affiliated F & M Ins. Co.	1
Allianz Insurance Co.	1
American Hardware Mutual Co.	1
American Insurance Co.	1
American Motorists Ins. Co.	11
American Mutual Ins. Co.	19
Associated Indemnity Corp.	1
Associated General Ins. Co.	1
Consolidated American Ins. Co.	1
Continental Ins. Co. (CNA)	14
Crum & Forster Ins. Companies.....	11
Employer's Ins. of Wausau	4
Federated Mutual Ins. Co.	4
Fidelity & Casualty of New York	4
Fireman's Fund	4
Georgia Casualty & Surety, Inc.	1
Great American Ins. Co.	1
Hartford Ins. Co.	5
Home Ins. Co.	42
International Ins. Co.	2
Insurance Co. of North America	6
Kansas Fire & Marine Ins. Co.	2
Liberty Mutual Ins. Co.	102
Maryland Casualty Co.	4
Michigan Mutual Ins. Co.	1
Nationwide Ins. Co.	3
Niagra Fire Ins. Co.	3
North River Ins. Co.	2
Northwestern National Casualty Co.	1
Royal-Globe Ins. Co.	2
Seaboard Fire & Marine Ins. Co.	1
Security Ins. Co.	1
Shelby Mutual Ins. Co.	2
State Fund	14
Transportation Ins. Co.	3
Transit Casualty Co.	1
Travelers Ins. Co.	6
U. S. Fidelity & Guaranty	15
U. S. Fire Insurance Co.	2

Zurich Ins. Co.	1
B. Self-Insured Servicing Companies	
Crawford & Company	1
Gay & Taylor, Inc.	1
Hewitt Coleman	5
James Co.	1
Pickney-Carter Co.	1
Randolph Hope Co.	20
C. Self-Insured Employers	
Arkansas Best Freight	1
Carolina Eastman	1
City of Greenville	5
Clinton Mills	1
Dependable Sanitation Service	1
Duke Power Company	1
Gifford-Hill Co., Inc.	2
Greenwood Mills	2
Korf Industries	1
Phillips Fiber Corp.	1
Rollins, Inc.	1
Sears	1
Shoney's, Inc.	1
Singer Co.	1
S.C. Highway Dept.	1
Southern Bell	1
Springs Mills	13
Thrift Bros. Lumber Co.	1
Western Electric Co.	1
Westinghouse Electric Corp.	1
Westvaco	6